Supreme Court, U.S.
FILED
FEB 7 1972
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1004

GENERAL TEAMSTERS LOCAL UNION
No. 528, et al.,
Petitioner,

versus

ALLIED FOODS, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

ROBERT L. MITCHELL
1801 First National Bank Tower
Atlanta, Georgia 30303

Attorney for Petitioner

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
TIME AND MANNER IN WHICH FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED	9
REASONS FOR GRANTING THE WRIT	10
CONCLUSION	15
APPENDIX A — OPINION OF TRIAL JUDGE	1a
APPENDIX B — SUPREME COURT OF GEORGIA	4a
CASES:	
DeRose v. Holcomb, 226 Ga. 289 (174 SE2d 410)	8, 11
Howat v. Kansas, 258 U.S. 181, 189-90 (1922)	11, 12
International Longshoremans Association, Local 1291 v. Philadelphia Trade Association, 389 U.S. 64	13
Lassiter v. Swift & Co., 204 Ga. 561 (50 SE2d 359)	8
National Labor Relations Board, v. Bell Oil Co., 98 F.2d 405, Page 406	14
Patten v. Miller, 190 Ga. 152(2) (8 SE2d 786)	8, 11
U.S. Court of Appeals, Third Circuit. Ford v. Kammerer, 78 LRRM 2832	11
Walling v. Crowe, 158 F.2d 80	14
Warner v. Martin, 124 Ga. 387 (52 SE 446)	8, 11

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

No.

GENERAL TEAMSTERS LOCAL UNION No. 528, et al,

Petitioner,

versus

ALLIED FOODS, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Georgia, entered in the above entitled case on December 1, 1971. A Motion For Rehearing was denied by said Court on December 17, 1971.

OPINIONS BELOW

The opinion of the Trial Judge is not officially reported, but is reprinted as "Appendix A" hereof. The opinion of the Supreme Court of Georgia is not yet officially reported, but is reprinted as "Appendix B" hereof.[1]

---

[1] Petitioner's Motion for Rehearing was denied without comment by the Supreme Court of Georgia on December 17, 1971.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on December 1, 1971.

The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1257(3). There is no Motion for Rehearing pending in said Court.

QUESTION PRESENTED

Whether a Defendant can be held in contempt of court and fined therefor, for alleged violation of an injunctive order that is vague, indefinite, uncertain and unintelligible as to what the Defendants were required to do, or cease doing. And whether a finding of contempt based upon such order, effectively denied Defendants the benefit of counsel and due process of law as guaranteed them in the Fifth and Fourteenth Amendments to The Constitution of the United States.

STATUTES INVOLVED

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

"Indictment, punishment, etc. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy

of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

"All persons born or naturalized in the United States, and subject to the jurisdiction hereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioners herein will be referred to as "Defendants" and the Respondent as "Plaintiff", the same designation the parties had in the Trial Court.

On November 20, 1970, Plaintiff filed a Complaint in Fulton Superior Court for temporary and permanent injunction.

On November 20, 1970, an Order was entered by one of the Judges of Fulton Superior Court, the material portion of said Order being as follows:

"It is Ordered that the Defendants, their agents, servants, employees and attorneys, and all persons acting in association with them, be and they are hereby restrained until 3 o'clock p.m., on the 18th day of December, 1970, from threatening, assaulting or throwing objects at Plaintiff's employees or supervisors or other persons, or throwing objects at vehicles in which any such employees, supervisors or other persons are riding, in the vicinity of Plaintiff's plant, or at any other place, from blocking the ingress to or egress from Plaintiff's plant or premises by any persons; and from congregating or gathering in the vicinity of Plaintiff's plant or along Hills Avenue and Hills Place between the two entrances to Plaintiff's plant and office, or in the vicinity of Plaintiff's parking lot on Hills Avenue located immediately across the creek from Plaintiff's plant, in numbers larger than two pickets at a time at each of the two entrances."

On December 8, 1970, Plaintiff filed a Motion reciting the Temporary Restraining Order of November 20, 1970, and contending that Defendant Union had conducted picketing at each of the entrances with numbers of pickets in excess of the two permitted by the Temporary Restraining Order and congregating in numbers larger than two. The Motion alleged that certain named persons (who were not parties to the original complaint) were guilty of Contempt for having knowingly violated the terms of the Temporary Restraining Order. The Plaintiff moved that Defendant

Union and sixteen other individuals be brought before the Court to answer for their alleged contempt and that each of them be adjudged in contempt and punished.

Defendant Union and the sixteen other individuals were ordered to show cause, why they should not be adjudged in contempt of Court and punished for such contempt.

On December 20, 1970, Plaintiff's application for Contempt came on for a hearing in the Superior Court, Atlanta Judicial Court, and after presentation of Plaintiff's evidence, the Court dismissed the Contempt Citation as to EVERETT SMITH and DAVID SIMPSON. Motions to Dismiss as to the other defendants were overruled.

At the conclusion of evidence and argument, the Court entered an order, the material portion of which is as follows:

> "Plaintiff's motion that Defendant Union and certain individual respondents be adjudged in contempt of court having come on for hearing, and the Court having heard evidence and oral argument by the parties, the Court makes the following findings:
>
> 1. The motion for contempt was dismissed with respect to Everett Smith and David Simpson at the conclusion of Plaintiff's evidence.

2. The evidence does not establish that the respondents Charlie Cook, Roosevelt Burney, Eugene Hudson, William Ellis Smith, Willie King, Avon Jenkins, Ella Rowe, Tommy Fisher, Jose Alvarez, Thelma Odom, Irene Berryhill, Willie A. Smith and Michael Cline knowingly violated the restraining order of Judge Jeptha C. Tanksley issued on November 20, 1970.

3. The Defendant, General Teamsters Local Union No. 528 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has knowingly violated the said restraining order on each of the 18 days since November 20, 1970, and is therefore found to have committed acts of contempt on each of such days.

4. The respondent William R. Towe has knowingly violated the said restraining order and is therefore found to be in contempt of court.

"WHEREFORE, it is ordered, adjudged and decreed that the said General Teamsters Local Union No. 528 and the said William R. Towe, and each of them, are guilty of contempt of this Court in their violations of the restraining order, as aforesaid.

"It is further ordered and decreed (1) that Plaintiff's Motion for Adjudication in Contempt be and it hereby is, denied with respect to Charlie Cook, Roosevelt Burney, Eugene Hudson, William Ellis Smith, Willie King, Avon

Jenkins, Ella Rowe, Everett Smith, Tommy Fisher, Jose Alvarez, David Simpson, Thelma Odom, Irene Berryhill, Willie A. Smith and Michael Cline; (2) that Defendant, General Teamsters Local Union No. 528, be, and it hereby is, fined in the amount of $200.00 for each of the said 18 days of violation of the restraining order, and that it pay an attorney's fee for benefit of Plaintiff in the amount of $1,500.00, and the costs of this contempt proceeding, such amounts to be paid into the registry of the Court for proper disbursement; and

(3) that the respondent William R. Towe be, and he hereby is, fined in the amount of $200.00."

A timely appeal was filed to the Supreme Court of Georgia upon behalf of General Teamsters Local Union No. 528 and William R. Towe. Defendants' second and third Enumeration of Errors were as follows:

2. "Enumeration of Error Number Two contends that the Court's Order upon which the Motion for Contempt was based was too vague, indefinite and uncertain to form the basis for a contempt citation.

The issue is whether the Temporary Restraining Order (R 1-2) was sufficiently definite and certain to be the legal basis for a judgment of contempt against Defendant Union.

3. Enumeration of Error Number Three and the issue is identical to Number Two except that it relates to the Defendant, William R. Towe."

The Court overruled said Enumerations of Error, holding in part:

> "If the Defendant is in doubt as to what acts he may or may not do under the order; he should request a modification or construction of its terms. If he proceeds under his own construction, he does so at his own peril. Warner v. Martin, 124 Ga. 387 (52 SE 446); Patten v. Miller, 190 Ga. 152 (2) (8 SE2d 786); DeRose v. Holcomb, 226 Ga. 289 (174 SE2d 410). In Lassiter v. Swift & Company, 204 Ga. 561 (50 SE2d 359), this court held: "Where, as here, the judgment excepted to is one finding the employees guilty of contempt of court for violation of an injunctive order issued on the petition of the employer, the rights of the employer and employees growing out of their relationship and the validity of the injunction order are not under review, but the sole question for this court to decide is whether or not the court's order is shown to have been violated by the employees."
>
> "It follows that these contentions are without merit."

Defendants filed a Timely Motion for Rehearing urging that for the Court to hold Defendants to be in contempt of such a vague, indefinite and uncertain order,

would violate the Constitutional rights guaranteed them by the Fifth and Fourteenth Amendments to the Constitution of the United States by depriving them of due process and the effective benefit of counse. (Pages 4 and 5, Defendants' Motion for Rehearing)

On December 17, 1971, the Supreme Court of Georgia denied Defendants Motion for Rehearing without comment.

TIME AND MANNER IN WHICH FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED

Defendants in their original Enumerations of Error, numbered Two and Three assigned error from the Trial Courts judgment as follows:

2. "Enumeration of Error Number Two contends that the Court's Order upon which the Motion for Contempt was based was too vague, indefinite and uncertain to form the basis for a contempt citation.

The issue is whether the Temporary Restraining Order (R 1-2) was sufficiently definite and certain to be the legal basis for a judgment of contempt against Defendant Union.

3. Enumeration of Error Number Three and the issue is identical to Number Two except that it relates to the Defendant, William R. Towe."

Additionally Defendants by Timely Motion for Rehearing contended that for the Court to hold Defendants to be in contempt of such a vague, indefinite and uncertain order would be in violation of their right to due process and the effective benefit of counsel, as guaranteed them in the Fifth And Fourteenth Amendments to the Constitution of the United States. (Pages 5 and 6, Defendants Motion for Rehearing)

The Court overruled Defendants Motion for Rehearing on each and every ground on December 17, 1971.

REASONS FOR GRANTING THE WRIT

This case presents a question of great public importance among the several states, the question being whether a citizen can be fined or imprisoned for failure to comply with an unintelligible order of court. Although this case does not arise under F.R.C.P. 65 (d), it does arise from an identical Georgia Statute, namely Civil Practice Act, section 65 (d), which reads as follows:

> "Form and scope of injunction or restraining order. — Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not be reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with

them who receive notice of the order by personal service or otherwise."

The Supreme Court of Georgia overlooked the aforesaid statute and in the second paragraph on page five of its Opinion held:

> "The injunction sufficiently complies with this code section. If the Defendant is in doubt as to what acts he may or may not do under the order, he should request a modification or construction of its terms. If he proceeds under his own construction, he does so at his own peril. Warner v. Martin, 124 Ga. 387 (52 Se 446); Patten v. Miller, 190 Ga. 152 (2) (8 SE2d 786); DeRose v. Holcomb, 226 Ga. 289 (174 SE2d 410)."

Since said statute was directly plagiarized from the Federal Rules of Civil Procedure, namely Rule 65 (d), which is identical, the burden is not upon a defendant to request a modification or construction of an injunction that is not specific in terms, or does not describe in reasonable detail the act or acts sought to be restrained.

"The United States Court of Appeals, Third Circuit, held in *FORD v. KAMMERER:*

> "Whether or not the district court issued the preliminary injunction on the basis of a correct or incorrect view of the law, the order must unquestionably be obeyed. Howat v. Kansas,

> 258 U.S. 181, 189-90 (1922). However, it need be obeyed only to the extent it reasonably specifies the conduct prohibited. Thus, Rule 65(d) of the Federal Rules of Civil Procedure, 28 U.S.C.A. 1970, provides that orders granting injunctions 'shall be specific in terms; shall describe in reasonable detail, and not be reference to the complaint or other document, the act or acts sought to be restrained." This language strongly suggests that prohibited conduct will not be implied from such orders' that they are binding only to the extent they contain sufficient description of the prohibited or mandated acts. The longstanding salutary rule in contempt cases is that ambiguities and omissions in orders redound to the benefit of the person charged with contempt."
> *U.S.C.A., 3rd Cir., 78 LRRM 2832* (not yet published.)

Specifically, the order in question is unintelligible for failure to name the Defendants, describe the location where picketing was to be circumscribed, fix the number of pickets or entrance ways, or to define the term "picket".

While a restraining order must be sufficiently specific in its terms without reference to the complaint, it must necessarily relate to the factual situation, that is, the order must be so clear and certain that the person sought to be restrained can relate the prohibition to the factual situation so that he readily knows what he is restrained from doing. Because the Court

failed to make a finding of fact, it is impossible to know what portion of the Restraining Order the Defendants were found to have violated. To illustrate how confusing the Order is as applied to the factual situation, the Order referred to a prohibition as to the number of pickets at each of "the two entrances". The evidence, however, shows that there were two entrances on Hills Avenue, as shown by Plaintiff's Exhibit 5 (TR. 317), and Plaintiff's Exhibit 7 (TR 319) shows that in addition to a driveway on Hills Place there is a drive to the loading dock which shows that there were actually four drives or entrances according to the Plaintiff's own evidence (TR 35; TR 64' TR 93 and TR 282).

The Order is also vague and indefinite in that it does not allege the City, County, State or Continent where Plaintiff's plant is located and the Order is also vague in referring to the term "picket" inasmuch as to the layman's mind a picket may be understood to mean one with a picket sign. There is nothing in the Order to indicate that persons who are not on actual picket duty could not be in the vicinity or nearby so as to relieve the pickets on duty.

As this Court so pointedly stated in International Longshoremans Association, Local 1291 v. Philadelphia Trade Association, 389 U.S. 64:

> "The judicial contempt power is a potent weapon. When founded upon a judicial decree too vague to be understood it is a deadly one."

Also see National Labor Relations Board vs. Bell Oil Company, 98 F.2d 405, at page 406, where the Court said:

> "Mandatory injunctions should be clear, direct, and unequivocal. They should not be hedged about by conditions and qualifications which cannot be performed or which may be confusing to one of ordinary intelligence. If placed in a dilemma by an ambiguous order, one who acts in good faith and with due respect to the court is not guilty of contempt."

Also Walling v. Crowe, 158 F.2d 80, where it was held:

> "The very nature of the proceeding in either civil or criminal contempt for an alleged disobedience of a decree of the Court, requires that the language in the commands of the decree be clear and certain."

It follows that to hold these Defendants in contempt of an unintelligible court order effectively denied Defendants the benefit of counsel and due process of law as guaranteed them in the Fifth and Fourteenth Amendments to the Constitution of the United States.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment of the Supreme Court of Georgia.

Respectfully submitted,

ROBERT L. MITCHELL
Two Peachtree Street, N.W.
1801 First National Bank Tower
Atlanta, Georgia 30303
Tel. 404-523-1983
Counsel to Petitioners

CERTIFICATE

Copy of the foregoing Petition for Certiorari was served upon Counsel of Record for Allied Foods Inc., Mr. William M. Pate, Atlanta Federal Savings Building, Atlanta, Georgia 30303, by United States Mail, Certified and properly franked on the ____ day of January, 1972.

ROBERT L. MITCHELL,
Attorney

APPENDIX A

"EXHIBIT A"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ALLIED FOODS, INC.,

Plaintiff

versus

Civil Action
File No. B-60452

GENERAL TEAMSTERS LOCAL UNION NO. 528 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; and CLAUDE BIDDY and WILFRED STEWART,

Defendants

ORDER

Plaintiff's motion that defendant union and certain individual respondents be adjudged in contempt of court having come on for hearing, and the court having heard evidence and oral argument by the parties, the court makes the following findings:

1. The motion for contempt was dismissed with respect to Everett Smith and David Simpson at the conclusion of plaintiff's evidence.

2. The evidence does not establish that the respondents Charlie Cook, Roosevelt Burney, Eugene Hudson, William Ellis Smith, Willie King, Avon Jenkins, Ella Rowe, Tommy Fisher, Jose Alvarez, Thelma Odom, Irene Berryhill, Willie A. Smith and Michael Cline knowingly violated the restraining order of Judge Jeptha C. Tanksley issued on November 20, 1970.

3. The defendant General Teamsters Local Union No. 528 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has knowingly violated the said restraining order on each of 18 days since November 20, 1970, and is therefore found to have committed acts of contempt on each of such days.

4. The respondent William R. Towe has knowingly violated the said restraining order and is therefore found to be in contempt of court.

WHEREFORE, it is ordered, adjudged and decreed that the said General Teamsters Local Union No. 528 and the said William R. Towe, and each of them, are guilty of contempt of this court in their violations of the restraining order, as aforesaid.

It is further ordered and decreed (1) that plaintiff's motion for adjudication in contempt be, and it hereby is, denied with respect to Charlie Cook, Roosevelt Burney, Eugene Hudson, William Ellis Smith, Willie King, Avon Jenkins, Ella Rowe, Everett Smith, Tommy Fisher, Jose Alvarez, David Simpson, Thelma Odom, Irene Berryhill, Willie A. Smith and Michael Cline;

(2) that defendant General Teamsters Local Union No. 528 be, and it hereby is, find in the amount of $200 for each of the said 18 days of violation of the restraining order, and that it pay an attorney's fee for benefit of plaintiff in the amount of $1,500, and the costs of this contempt proceeding, such amounts to be paid into the registry of the court for proper disbursement; and (3) that the respondent William R. Towe be, and he hereby is, fined in the amount of $200.

By payment of the said fine of $200 into the registry of the court within 30 days from this date, William R. Towe may purge himself of the contempt herein found. The court retains jurisdiction of this matter for the purpose of imposing further penalty for contempt upon the said William R. Towe in the event that he does not make payment of the fine within 30 days from this date.

Defendant General Teamsters Local Union No. 528 may purge itself of the contempt herein found by making payment of the said fine of $200 for each of the said 18 days, and the attorney's fee in the amount of $1,500, and costs of this contempt proceeding, into the registry of the court within 30 days from the date of this order. The court retains jurisdiction of this matter for the purpose of imposing further penalty for contempt upon the said General Teamsters Local Union No. 528 in the event that it does not make payment of these amounts within such period.

This 23 day of December, 1970.

(Signed) JACK ETHERIDGE
JUDGE, SUPERIOR COURT
ATLANTA JUDICIAL
CIRCUIT

Filed in office Dec. 24, 1970
Walter W. Miles
Deputy Clerk Superior Court
Fulton County Georgia

APPENDIX B

"EXHIBIT B"

Supreme Court of Georgia
Decided: Dec. 1, 1971
#525

26822. GENERAL TEAMSTERS LOCAL UNION NO. 528, et al. v. ALLIED FOODS, INC.

UNDERCOFLER, Justice. On the verified complaint of Allied Foods, Inc. against General Teamsters Local Union No. 528 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and two named individuals, a judge of the Superior Court of Fulton County on November 20, 1970 issued a temporary restraining order. On December 8, 1970 before the date set for the hearing on said interlocutory injunction, the complainant filed a motion praying that the Union and named individuals be ad-

judged in contempt of court for specific violations of the temporary restraining order. Pursuant to a rule nisi issued on that motion, a hearing was held on December 21, 1970. Thereafter an order was passed finding that the Union had knowingly violated the restraining order on each of 18 days since November 20, 1970, and found it to have committed acts of contempt on each of such days. The order also found that William R. Towe, an individual, had knowingly violated the said restraining order and found him to be in contempt of court. The Union was fined $200 for each of the 18 days of violation of the restraining order, and was ordered to pay an attorney's fee for the benefit of the complainant in the amount of $1,500. William R. Towe was fined $200. This order was appealed to this court but was dismissed as being premature. General Teamsters Local Union No. 528 v. Allied Foods, Inc., 227 Ga. 830 (SE2d). Thereafter, the Union and Towe filed a motion for discharge from contempt based on various grounds. The motion was overruled on each ground. The appeal is from that judgment. *Held:*

1. The appellants contend that the trial court erred in entering judgment against them without first finding the facts specially and in failing to state separately its conclusions of law as required by Code Ann. § 81A-152 (a). This Code section provides: "In all actions in superior court tried upon the facts without a jury, except actions involving only uncontested divorce, alimony and custody of minors, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to section 81A-158." Acts 1969, pp. 645, 646; 1970, pp. 170, 171.

The trial court made certain findings in this case which including the following: "3. The defendant . . . [Union] . . . has knowingly violated the said restraining order on each of 18 days since November 20, 1970, and is therefore found to have committed acts of contempt on each of such days. 4. The respondent William R. Towe has knowingly violated the said restraining order and is therefore found to be in contempt of court."

In 5A Moore's Federal Practice (2d) 2706, § 52.06 (1) it is stated: "The purpose of findings of fact is threefold: as an aid in the trial judge's process of adjudication; for purposes of res judicata and estoppel by judgment; and as an aid to the appellate court on review."

The findings of the trial court in this case are sufficient to enable this court to understand clearly the basis of its decision and the conclusions of law reached by it. The conclusions of law are separately stated based on the facts found by the trial court.

These contentions are without merit.

2. The appellants contend that the trial court erred in finding the Union and Towe guilty of contempt and assessing fines against them because the temporary restraining order upon which the contempt citation was based was vague, indefinite, uncertain and confusing and failed to put them on notice as to what they were required to do or prohibited from doing.

Code Ann. § 81A-165 (d) provides: "Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive notice of the order by personal service or otherwise." Acts 1966, pp. 609, 665; 1967, pp. 226, 240.

The injunctive order provides: "'. . . that the defendants, their agents, servants, employees and attorneys, and all persons acting in association with them be and they hereby are restrained until 3:00 o'clock p.m., on the 18th day of December, 1970, from threatening, assaulting or throwing objects at plaintiff's employees or supervisors or other persons, or throwing objects at vehicles in which any such employees, supervisors or other persons are riding, in the vicinity of plaintiff's plant, or at any other place, from blocking the ingress to or egress from plaintiff's plant or premises by any persons, and from congregating or gathering in the vicinity of plaintiff's plant or along Hills Avenue and Hills Place between the two entrances to plaintiff's plant and office, or in the vicinity of plaintiff's parking lot on Hills Avenue located immediately across the creek from plaintiff's plant, in numbers larger than two pickets at a time at each of the two entrances."

The injunction sufficiently complies with this code section. If the defendant is in doubt as to what acts

he may or may not do under the order, he should request a modification or construction of its terms. If he proceeds under his own construction, he does so at his own peril. Warner v. Martin, 124 Ga. 387 (52 SE 446); Patten v. Miller, 190 Ga. 152 (2) (8 SE2d 736); DeRose v. Holcomb, 226 Ga. 289 (174 SE2d 410).

In Lassiter v. Swift and Company, 204 Ga. 561 (50 SE2d 359), this court held: "Where, as here, the judgment excepted to is one finding the employees guilty of contempt of court for violation of an injunctive order issued on the petition of the employer, the rights of the employer and employees growing out of their relationship and the validity of the injunction order are not under review, but the sole question for this court to decide is whether or not the court's order is shown to have been violated by the employees."

It follows that these contentions are without merit.

3. The evidence in this case shows that the attorney for the Union was present at the time when the trial judge signed the restraining order on November 20, 1970; that the Union failed to give notice to the strikers or picket captains of the restraining order; that the Union made no effort to bring the strikers and pickets into compliance with the court's order despite the fact that the Union continued to meet with them and schedule and instruct the pickets; that pickets were scheduled by the Union in numbers exceeding those permitted by the restraining order; that the Union continuously violated the restraining order by maintaining strikers at the company in numbers exceeding those au-

thorized by the order, except for certain specified days; that immediately after the restraining order was signed on Friday, about 50 copies of it were made by the company; that about 6:15 p.m. that same day a copy was taken to the picket line at both entrances and read to the pickets and about 30 strikers were present at one of the entrances at that time; that on the following Monday, the order was again read to the assembled strikers and copies given them; that on Tuesday a company supervisor began reading a copy of the order to 8 strikers at one of the entrances and was stopped by one of them saying that he wanted that "Mickey Mouse" document and the order was given to him, and that the company had the order read repeatedly to the strikers and copies were given to them.

The evidence also shows that Towe was a picket captain who had attended about three Union meetings which were held during the strike; that two of these meetings were held after the restraining order had been issued; that the Union did not advise the strikers in Towe's presence of the restraining order; that Towe had heard that a restraining order had been issued "to the picket lines and all that if there had been, but I have never seen one read or had one read to me"; that on December 3, 1970 Towe was in a group of five strikers at the picket line; that he also admitted being present at the picket line on other occasions after issuance of the order; that Towe and another striker left the picket line and chased a nonstriking employee toward a bus stop as he left work and the other striker with him threatened to "get" the nonstriking employee;

that Towe received direct instructions as a picket captain from the Union officials and was told a restraining order would be issued if there was any violence at the company.

(a) The appellant Towe contends that there was no evidence that he had notice of the restraining order prior to the commission of the alleged contemptuous acts and contends further that the evidence is insufficient to find him guilty of contempt of court. We do not agree with these contentions.

"It is settled law that, to sustain a judgment holding them in contempt, the evidence must show that they acted after having actual knowledge of the court's order. While there is no direct proof that these plaintiffs in error had such knowledge, there is, however, circumstantial evidence . . . sufficient to authorize the trial judge to find that they acted with such knowledge." Lassiter v. Swift & Co., 204 Ga. 561, 569 (50 SE2d 359).

"Whether a contempt of court has been committed in the violation of an injunctive order, and how it shall be treated, are questions for the discretion and judgment of the court that issued the order, and its discretion will not be interfered with by this court unless there is an abuse of discretion. If there be any substantial evidence from which the judge could have concluded that his order had been violated, his finding to that effect cannot be disturbed by this court, insofar as the sufficiency of the evidence is concerned. Patten v. Miller, 190 Ga. 152 (5) (8 SE2d 786); Pedigo v. Cela

nese Corporation of America, 205 Ga. 392 (54 SE 252)". Carroll v. Celanese Corp. of America, 205 Ga. 493 (4) (54 SE2d 221).

The contentions of Towe are therefore without merit.

(b) The Union contends that there is no evidence to support the finding of the trial court that it was guilty of contempt. We do not agree with this contention. The evidence is sufficient to support this finding by the trial court.

The contentions of the Union are therefore without merit.

4. The appellant Union contends that the contempt citation did not allege that it had committed acts of contempt on each of eighteen days and that it was therefore "illegally deprived of effective benefit of counsel".

The motion of the complainants filed on December 8, 1970 alleged that "on every day since the said restraining order was issued, other than holidays and some Saturdays and Sundays, the defendant Union has conducted picketing at each of said entrances with numbers of pickets in excess of the two permitted by the restraining order. . ."

This was sufficient notice to the Union that the alleged contemptuous acts were of a continuous nature.

There is no merit in this contention.

5. The appellant Union contends that the trial court was not authorized to award attorney's fees to the complainant because such an award is not authorized by law, was without authority of law, and was in excess of the court's jurisdiction.

"In Warner v. Martin, 124 Ga. 387 (52 SE 446, 4 Ann. Cas. 180), the defendant in an injunction case was sentenced to pay a fine of $250 for violating a restraining order. This court said 'The judgment rendered on such a hearing will not be disturbed by the Supreme Court, unless the judge has grossly abused the sound discretion vested in him in such cases'; but that 'A judge of the superior court has no power to impose a fine of more than two hundred dollars for contempt in violating a temporary restraining order, where the violation was treated by the judge as a single act'; and the judgment was affirmed with direction that $50 be written off the fine". Pedigo v. Celanese Corporation of America, 205 Ga. 392, 402 (3) (54 SE2d 252).

Code Ann. § 24-2615 provides that the superior courts have authority: "5. To punish contempt by fines not exceeding $200, and by imprisonment not exceeding 20 days." The power of the superior court is limited by this code section. Warner v. Martin, 124 Ga. 387 (4) (52 SE 446). Compare Stevenson v. Stevenson, 222 Ga. 47 (4) (148 SE2d 388). The trial court had no authority to award attorney's fees to the complainant in this action.

We affirm the judgment of the trial court with direction that the $1,500 awarded as attorney's fees on behalf of the complainant be written off the judgment.

6. In view of the above ruling, it is not necessary to decide the other enumerations of error.

Judgment affirmed with direction. All the Justices concur.

"EXHIBIT B-1"

Clerk's Office, Supreme Court of Georgia
Atlanta Dec. 17, 1971

Dear Sir:

Case No. 26822. General Teamsters Local Union No. 528 et al. v. Allied Foods, Inc.

THE MOTION FOR A REHEARING WAS DENIED TODAY

Yours very truly,

MRS. JOLINE B. WILLIAMS,
Clerk

Return Postage Guaranteed
Clerk Supreme Court
506 Judical Building, Capitol Square
Atlanta, Georgia 30334

(STAMP)

Mr. Robert L. Mitchell
Attorney At Law
1301 First National Bank Tower
Atlanta, Georgia 30303